

Remarks

Claims 1-26 are pending in the instant application, including independent claims 1 and 17. The examiner has rejected claims 1-3 and 9-26, and has objected to claims 4-8 as being allowable but for their dependence on a rejected base claim. In this Response, Applicant amends claim 22 responsive to the indefiniteness rejection of that claim based on 35 U.S.C. § 112 but makes no other claim amendments. Instead, because Applicant strongly believes that the examiner's various rejections of claims 1-3 and 9-26 as being anticipated and/or obvious fail as a matter of law, and must be withdrawn as explained in the brief arguments given below.

As a concise overview, the examiner rejects the instant application's two independent claims (1 and 17) as being anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,567,653 to Sanders, and further rejects several of the dependent claims as being obvious over Sanders standing alone, or obvious over Sanders in combination with one or more additional patents. Respectfully, all of the examiner's rejections fail outright as a matter of law for the simple reason that Sanders utterly fails to disclose what the examiner alleges. That is, the examiner cannot use a reference—i.e., Sanders—that does not mention or even hint at amplifier phase shift compensation to reject claims that include such compensation as an explicitly claimed limitation. Indeed, it is troubling that Applicant finds nothing in Sanders about phase compensation after searching its disclosure word-for-word and line-by-line and yet the examiner's Office Action flatly and repeatedly states that it makes such disclosure.

In more detail, the examiner rejects claims 1-3, 13, 15-19, and 24-26 under 35 U.S.C. § 102(e) as being anticipated by Sanders. It is worth noting that the examiner

carries the initial burden of proof in setting out the factual basis to support any rejection under 35 U.S.C. § 102. With regard to that burden, showing anticipation under 102 requires that each and every element of the claimed invention be disclosed in the cited reference. *Akzo N.V. v. United States Int'l Trade Comm'n*, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986). Thus, to sustain the anticipation rejection of the instant invention as claimed, Sanders must as a matter of law disclose each and every element of the claimed invention.

In looking at claim 1 of the instant application, one sees that it includes the limitations of “a modulator to generate a modulated output signal responsive to at least one baseband information signal,” “an amplifier to generate a transmit signal based on amplifying said modulated output signal, said amplifier having at least first and second operating modes,” and “a phase compensator to selectively impart a compensating phase shift to said at least one baseband information signal to offset an expected phase shift imparted to said transmit signal by said amplifier when operating in said second mode.”

In rejecting claim 1, the examiner states that “Sanders discloses . . .” and then inserts a verbatim copy of claim 1 from the instant application, followed by a parenthetical reference to col. 7, line 65-col. 8, line 39 of Sanders. The examiner offers no analysis of Sanders and makes no attempt to identify how or where Sanders might disclose the elements of Applicant's claim 1, which includes the limitation of a phase compensator to selectively impart a compensating phase shift to said at least one baseband information signal to offset an expected phase shift imparted to said transmit signal by said amplifier when operating in said second mode.

Therefore, to anticipate claim 1 Sanders therefore must disclose or suggest a like phase compensator. Sanders does not even disclose the concept of phase compensation, much less disclose phase compensation according to claim 1. Sanders therefore fails to anticipate claim 1 as a matter of law and the examiner's 102 rejection of claim 1 must be withdrawn. Similarly, the examiner's further anticipation rejections of dependent claims 2, 3, 15, and 16 based on Sanders fail for at least the same reasons and must be withdrawn.

Further, Applicant notes that claim 17 stands as the only other independent claim in the instant application, and is presented as a method claim corresponding to claim 1. Claim 17 includes a limitation of imparting a compensating baseband signal phase shift like claim 1 and, as such, the examiner's rejection of claim 17 and its dependent claims 18, 19, and 24-26 as being anticipated by Sanders also fail as a matter of law at least for the same reasons as argued for claim 1. In short, all anticipation rejections made by the examiner must be withdrawn as a matter of law because of Sanders' failure to disclose the instant invention as claimed.

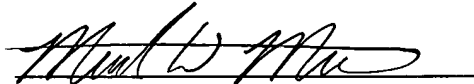
The examiner makes additional claim rejections based on obviousness under 35 U.S.C. § 103(a). Specifically, the examiner rejects claims 9-11, 22 and 23 as being obvious over Sanders in view of U.S. Patent No. 5,150,072, rejects claims 12 and 14 as being obvious over Sanders alone, and rejects claims 20 and 21 as being obvious over Sanders in view of U.S. Patent No. 6,614,854. While these obviousness rejections largely are rendered moot because of the allowability of the independent claims in light of the examiner's failed 102 rejections, Applicant notes that all of the examiner's obviousness rejections fail as a matter of law because Sanders as the primary

reference for all such obviousness rejections simply does not disclose what the examiner alleges it does. As pointed out above, Sanders makes no mention of compensating for phase shifts and by definition then cannot be used to anticipate or make obvious the claims in the instant application.

In light of the above arguments and the amendments to claim 22 as made herein, Applicant believes that all pending claims (1-26) stand in condition for immediate allowance and respectfully requests reconsideration as such by the examiner. Further, if the examiner has any questions or concerns regarding this response, or any other issue related to the instant application, the examiner is encouraged to call the undersigned agent.

Respectfully submitted,

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